



HOUSE OF LORDS

European Union Committee

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9th Report of Session 2017–19

# **Brexit: will consumers be protected?**

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## CONTENTS

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	<i>Page</i>
<b>Summary</b>	<b>3</b>
<b>Chapter 1: Introduction</b>	<b>5</b>
Setting the scene	5
Box 1: EU's powers to legislate for consumer protection	5
The EU Committee's Work	7
<b>Chapter 2: The EU's consumer protection <i>acquis</i> and the UK</b>	<b>8</b>
Complex and interconnected	8
Box 2: Examples of general EU consumer protection legislation	8
Box 3: Examples of sector specific EU consumer protection law	10
UK's role in shaping EU consumer protection <i>acquis</i>	10
Box 4: Document 15251/15: Proposed Directive on certain aspects concerning contracts for the supply of digital content	11
Conclusions	12
<b>Chapter 3: Significant areas of the <i>acquis</i></b>	<b>13</b>
General areas of the <i>acquis</i>	13
The ADR Directive	13
Three important aspects of the <i>acquis</i>	13
Box 5: The Rapid Alert System (RAPEX)	14
The Consumer Protection Cooperation Regulation	14
Box 6: The Consumer Protection Cooperation Regulation 2006/2004	15
Box 7: Example of the CMA's pan-European cooperation on consumer protection	16
CEN and CENELEC	17
Box 8: European product standardisation bodies	18
Relationships with regulatory agencies	19
Conclusions	19
<b>Chapter 4: The Government's approach to consumer protection and Brexit</b>	<b>20</b>
Government engagement with stakeholders	20
The utility of the European Union (Withdrawal) Bill	21
Box 9: Legislating for the UK's withdrawal from the European Union: Consumer Protection	21
Box 10: The European Union (Withdrawal) Bill	22
Conclusions	24
Minister's response to the risk of a reduction in the UK's consumer protection standards	24
Conclusions	24
Minister's response to the loss of reciprocal cross-border cooperation mechanisms	25
Conclusions	26
Pressure on national regulators	27
Conclusions	28
<b>Summary of conclusions and recommendations</b>	<b>29</b>

<b>Appendix 1: List of Members and declarations of interest</b>	<b>32</b>
<b>Appendix 2: List of witnesses</b>	<b>34</b>

Evidence is published online at <http://www.parliament.uk/brexit-consumer-protection-rights> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

## SUMMARY

This report highlights our concerns about the Government's approach to the negotiation of the UK's post-Brexit participation in the important areas of EU cooperation that help protect consumers' rights. Beyond advocating a deep and special relationship with the EU post-Brexit, the Minister was unable to provide us with any detail as to how the Government might secure, post-Brexit, the UK's access to a range of cross-border mechanisms and infrastructure that facilitate and encourage cooperation between the various national bodies responsible for protecting consumers.

During the UK's membership of the European Union, the EU and the UK have shared the responsibility to legislate to protect consumers' rights. In total, over the last 40 years, this body of law, the so-called EU's consumer protection *acquis*, has grown to encompass around 90 European Directives that apply across the Single Market. The rights enshrined in these Directives enable all consumers to seek redress for any poor service they receive, for instance, when they hire a car; book a holiday; eat in a restaurant; purchase a product; or stay in a sub-standard hotel at home or in another EU Member State.

While the Government's EU (Withdrawal) Bill will succeed in mirroring the individual consumer rights that operate within the EU in domestic law, it cannot ensure the protection of UK consumers' rights when they visit the EU 27 post-withdrawal. Nor can it guarantee the UK's continued access to the EU's shared network of agencies, mechanisms and infrastructure that police, secure, develop and underpin consumer rights across the Single Market. The UK has had considerable influence within the field of consumer protection hitherto, and it is important that its access to this EU network should be maintained post-Brexit.

The Minister was unable to provide us with any plan as to how the Government will successfully secure the UK's continued participation in these key areas of EU cooperation post-Brexit. Eighteen months after the referendum, we question whether the Government has given any thought to finding a solution to this problem at all.

We call on the Government to produce as a matter of urgency a clear plan as to how bodies such as the Competition and Markets Authority and national regulators, in collaboration with similar national bodies in the EU 27, can continue to access, cooperate and engage with this important EU infrastructure, which has protected and secured the interests of UK consumers for more than 40 years.



# Brexit: will consumers be protected?

## CHAPTER 1: INTRODUCTION

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### Setting the scene

1. Since the UK joined the European Economic Community in 1972, the (now) European Union institutions and the individual Member States have shared responsibility to legislate to protect consumers' rights.<sup>1</sup> During this time, the EU has used its powers to create a wide range of EU legislation, estimated to be in total around 90 Directives and Regulations,<sup>2</sup> which together form the EU's consumer protection *acquis*. Mr Chris Woolard, Executive Director of Strategy and Competition at the Financial Conduct Authority (FCA), summarised the "landscape" between the EU and its Member States in this context as "complex and interconnected".<sup>3</sup>

### Box 1: EU's powers to legislate for consumer protection

References to consumer protection are scattered throughout the EU Treaties. For example, Article 12 (TFEU)<sup>4</sup> states that: "Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities". Article 38 of the EU's Charter of Fundamental Rights says that Union policies will ensure a "high level of consumer protection".

Article 169 (TFEU) sets out the fundamental aims of the EU's power to legislate in this field:

"In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interest of consumers, as well as promoting their right to information, education and to organise themselves in order to safeguard their interests."

Alongside the Treaty Articles that specifically address consumer protection, and on the basis that diverse consumer protection rules create barriers to cross-border trade, the EU has also frequently legislated in this area via recourse to the general single market legal basis.<sup>5</sup>

2. This complex and interconnected system touches on all areas of the UK's economy and protects a wide range of rights, on which UK citizens rely when they undertake the myriad transactions of everyday life. The Minister responsible for consumer rights, Margot James MP, said that "when we leave the EU we will be leaving a system of consumer rights and protection ... which sits very well with the needs of consumers in the United Kingdom".<sup>6</sup>

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1 This shared competence is now confirmed in Article 4(2)(f) Treaty on the Functioning of the European Union (TFEU), [OJ C 326](#) (consolidated version of 26 October 2012) pp 1–390

2 European Parliament, *Consumer Protection in the EU, Policy Overview*, September 2015, p 5: [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS\\_IDA\(2015\)565904\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf) [accessed 22 November 2017]

3 [Q 41](#)

4 Article 12, [Treaty on the Functioning of the European Union](#)

5 Now Article 114, [Treaty on the Functioning of the European Union](#)

6 [Q 51](#)

3. We decided to launch this inquiry in February 2017 (before the General Election was called), because we were concerned that the Government's public pronouncements on Brexit failed to do justice to the issue of consumer protection. For example, the White Paper *The United Kingdom's exit from and new partnership with the European Union*<sup>7</sup> made only vague references to the general interests of consumers, and did not address directly how the Government might approach the subject in its preparations for Brexit.
4. Then, in March 2017 after we had begun taking evidence, the Government's White Paper on *Legislating for the UK's withdrawal from the European Union*<sup>8</sup> promised that the (then) so-called Great Repeal Bill "will preserve the relevant EU [consumer protection] law to ensure that domestic law functions properly after exit ... It will help ensure that UK consumers' rights continue to be robust after we have left the EU".<sup>9</sup>
5. Most of the EU's consumer protection *acquis* that provides the baseline for legislation in the UK takes the form of Directives, which are implemented via national law (see Boxes 2 and 3). Given this, our evidence suggests that the (now) European Union (Withdrawal) Bill ('the Bill') will, for the most part, be sufficient to address the future application of the EU's consumer *acquis* to the UK post-Brexit. However, while praising this aspect of the Bill, our witnesses were concerned about its inability to address the potential loss of the EU's reciprocal systems for coordinating cross-border information exchange, cooperation and enforcement.
6. For example, Mr Leon Livermore, Chief Executive of the Chartered Trading Standards Institute, described the Bill as a "very good starting point", but the "bigger challenge" lay "in relation to some of the specific references in some legislation to European bodies of which we will cease to be members".<sup>10</sup> The Consumer Protection Cooperation Regulation<sup>11</sup> (CPC Regulation) (see Box 6), which facilitates cross-border cooperation between national bodies responsible for protecting consumers such as the Competition and Markets Authority in the UK, emerged as a key item of EU legislation, as did the UK's membership of various EU Executive and/or Regulatory Agencies.
7. Aside from those items of EU law identified by our witnesses as particularly important and set out in this report, we did not have the time to take evidence on the merits of individual items of EU consumer protection legislation. Rather, we sought to explore the "bigger challenge" referred to by Mr Livermore, and to consider the Government's proposed approach to this challenge.

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7 HM Government, *The United Kingdom's exit from and new partnership with the European Union*, Cm 9417, February 2017: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf) [accessed 20 November 2017]

8 Department for Exiting the European Union, *Legislating for the UK's Withdrawal from the European Union*, Cm 9446, March 2017: <https://www.gov.uk/government/publications/the-repeal-bill-white-paper/legislating-for-the-united-kingdoms-withdrawal-from-the-european-union> [accessed 20 November 2017]

9 *Ibid.*

10 [Q 26](#)

11 Regulation 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) Text with EEA relevance ([OJL 364](#), 9 December 2004, pp 1–11)



### **The EU Committee's Work**

8. Following the referendum in June 2016, the European Union Committee and its six Sub-Committees launched a series of coordinated inquiries, addressing the most significant aspects of Brexit. The inquiries are intended to be short and to inform and explore the major challenges and opportunities of Brexit.
9. To that end, in March we begun by taking evidence from the consumer organisation Which? and the Citizens Advice Bureau (CAB). Our inquiry recommenced in July, after the General Election, and we continued taking evidence until October. We also received a number of written submissions. We are grateful to all those who submitted evidence to our inquiry.
10. **We make this report to the House for debate.**

## CHAPTER 2: THE EU'S CONSUMER PROTECTION *ACQUIS* AND THE UK

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### Complex and interconnected

11. Since the 1970s the EU institutions have agreed a wide range of legislation dealing with consumer protection rights, legislation that is interwoven with Member States' national law. Broadly, this legislation either sets minimum standards for consumer contracts (see Box 2) or performs a similar task for specific areas of the economy (see Box 3).<sup>12</sup>

### Box 2: Examples of general EU consumer protection legislation

- Directive 2011/83/EC on consumer rights.<sup>13</sup> This Directive seeks to protect consumers in respect of distance contracts and contracts negotiated away from business premises as well as in respect of certain other aspects of consumer contracts. It seeks to strengthen consumer rights, by establishing rules on the information to be provided to consumers, regulating the right of withdrawal from contracts and harmonising certain contractual provisions;
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market.<sup>14</sup> This Directive prohibits misleading and aggressive practices, including 'sharp practices' such as pressure selling, misleading or unfair marketing and advertising, and practices which use coercion as a means of selling. It includes criteria for determining aggressive commercial practices (harassment, coercion and undue influence), and a 'blacklist' of unfair commercial practices;
- Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees.<sup>15</sup> This Directive seeks to harmonise the parts of consumer sales contract law that concern legal guarantees (warranties) and, to a lesser extent, commercial guarantees;
- Directive 93/13/EEC on unfair contract terms in consumer contracts.<sup>16</sup> This Directive introduced the notion of 'good faith' into the EU's consumer protection *acquis* so as to prevent significant imbalances in the rights and obligations of consumers on the one hand, and sellers and suppliers on the other; and

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12 In some areas, for example, financial services (see Box 3) EU legislation provides for the full harmonisation of consumer protection standards and the Member States are not free to enact higher levels of protection.

13 Implemented in the UK via the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ([SI 2013/3134](#)).

14 Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market, ([OJ L 149](#), 11 June 2005, pp 22–39). This Directive necessitated amendments across the UK's consumer protection regime, but is largely implemented in the UK via the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008

15 Directive 1999/44/EC of the European Council and of the Council on certain aspects of the sale of consumer goods and associated guarantees ([OJ L 171](#), 7 July 1999, pp 12–16). Implemented in the UK via the Sale and Supply of Goods to Consumers Regulations 2002 ([SI 2002/3045](#)).

16 Council Directive 1993 /13/EEC on unfair terms in consumer contracts ([OJ L 95](#), 21 April 1993, pp 29–34). Implemented in the UK via the Unfair Terms in Consumer Contracts Regulations 1994 ([SI 1994/3159](#)).

- Directive 2008/48/EC on credit agreements for consumers.<sup>17</sup> This Directive provides for a comprehensible set of information to be given to consumers in good time before a contract is concluded and also as part of credit agreements. It seeks to enhance existing consumer rights on the provision of information before and during the life of a credit agreement, and introduces new consumer rights in relation to credit agreements, such as the right to withdraw from an agreement within 14 days and the right to repay early.

12. Mr Roland Green, Deputy General Counsel at the Competition and Markets Authority (CMA), said that “EU law seeks to secure a high level of protection for consumers”.<sup>18</sup> Mr Alan Conroy, of Maidstone Chambers, was more critical of the *acquis*. He argued that the EU’s approach to consumer protection “is more concerned with the development of markets and competition than it is with protecting individuals”. In his view, the EU was willing to accept “a certain level of ‘casualties’ amongst consumers providing that obstacles to the single market are minimised”,<sup>19</sup> and he called for a “sweeping review” of the *acquis*.<sup>20</sup>
13. Mr Pete Moorey, Head of Campaigns at the consumer organisation Which?, emphasised the interplay between national and EU law. He stated that it was “important to note that while the EU provided a really important basis for a lot of the rights and protections that we have here, the UK has often decided to go beyond those and to introduce further rights”. For example, in the UK “we have the right to reject a product for up to 30 days if there is something wrong with it. Under that Directive at EU level, that is limited to 14 days”.<sup>21</sup> Mr Chris Woolard at the FCA expressed a similar view: “European regulation provides a degree of baseline, and UK legislation usually sits alongside that to give us a deeper sense of what consumer protection is required”.<sup>22</sup>

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17 Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers ([OJ L 133](#), 22 May 2008, pp 66–92). Implemented in the UK via the Consumer Credit (Agreements) Regulations 2010 ([SI 2010/1014](#)).

18 [Q 36](#)

19 Written evidence from Alan Conroy, Maidstone Chambers ([CPR0001](#)), para 3.

20 Written evidence from Alan Conroy, Maidstone Chambers ([CPR0001](#)), para 15; the Commission is currently engaged in such a review.

21 [Q 1](#)

22 [Q 41](#)

**Box 3: Examples of sector specific EU consumer protection law**

- Travel: Regulation 300/2008 on common rules in the field of civil aviation security; Directive 90/314/EEC on package travel, package holidays and package tours; Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and cancellation or long delay of flights; Regulation 181/2011 concerning the rights of passengers in bus and coach transport; Regulation 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway;
- Financial services: Directive 2007/64/EC on payment services in the internal market;
- Energy: Directive 2012/27/EU on energy efficiency; Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products; and,
- Food safety: Regulation 1169/2011 on the provision of food information to consumers; Regulation 609/2013 on food intended for infants and young children, and food for medical purposes.

Other measures that merit a mention include Directive 85/374 on product liability for defective products, and the European Judicial Network, which works on consumer issues. The EU has also agreed legislation seeking to facilitate cross-border dispute resolution of consumer disputes: Directive 2013/11/EU on alternative dispute resolution for consumer disputes is supported by Regulation 524/2013 on the on-line dispute resolution of consumer disputes.

14. In contrast, Professor Chris Willett of the University of Essex suggested that “a very significant proportion of UK consumer protection law derives from EU law”.<sup>23</sup> In his view, many of these rights “did not exist at all in UK law before they were introduced”. He recognised that in some cases “there were UK rules on the issues”, but argued that “consumers are much better protected” since the EU’s rules were introduced.<sup>24</sup>

*UK’s role in shaping EU consumer protection acquis*

15. Witnesses emphasised the role played by the UK in shaping the content of the EU’s rules. Mr Lewis Shand Smith, the Chief Executive of the Ombudsman Services, said that UK officials “play a major role in both regulation and consumer protection and in the development of policy”.<sup>25</sup> He referred to specific UK influence over the creation of the legislation introducing Alternative Dispute Resolution for consumer disputes (the ADR Directive) (see Box 3).
16. Mr Jason Freeman, Director, Consumer Law, at the CMA cited the UK’s good reputation<sup>26</sup> in this field, adding that the CMA had “worked very closely with the Commission on proposals”, and with Government Departments “in the negotiation and implementation of those pieces of law”.<sup>27</sup> He argued that this influence, and the UK’s “leading role” in “European joint work”,<sup>28</sup> meant that the EU rules that have emerged from the EU’s institutions “have

23 Written evidence from Professor Chris Willett (CPR0003)

24 Written evidence from Professor Chris Willett (CPR0003)

25 Q 12

26 Q 31

27 Q 29

28 Q 31

broadly reflected what the UK has sought to achieve, and they have therefore been positive”.<sup>29</sup>

17. Both the CMA<sup>30</sup> and Which? cited, as a specific example of the UK’s influence over the EU’s consumer protection *acquis* in relation to e-commerce, the Commission’s 2015 proposal dealing with the purchase of digital content such as console games and movie downloads (see Box 4). Mr Pete Moorey of Which? said that this proposal drew “very much on the new rights that UK consumers have had since 2015 through the Consumer Rights Act”, and concluded that “yes, we believe that the UK has played a very important role”.<sup>31</sup>

**Box 4: Document 15251/15: Proposed Directive on certain aspects concerning contracts for the supply of digital content**

Drawing heavily on the UK’s Consumer Rights Act 2015 (which came into effect in October 2015), the Commission’s Proposed Directive on certain aspects concerning contracts for the supply of digital content was brought forward in December 2015. Introduced as part of the EU’s ambitious strategy for the creation of an EU Digital Single Market, it will introduce new harmonised contractual rights for consumers, throughout the EU, when they purchase digital content online.

The Council agreed a General Approach text in June 2017, which, according to the Government’s responses during our scrutiny of the proposal, meets the UK’s “overall objectives”, and represents a “clear, consistent, and proportionate set of rights for consumers across the EU”.

The proposed Directive is designed to reflect the rapid technological advances in the digital sector, and includes a broad definition of digital content that covers online purchases such as downloaded or streamed movies, cloud storage and social media. It imposes a range of obligations on the suppliers of digital content, including (Article 6):

- that the digital content be of the requisite “description, quantity and quality, and shall possess functionality, compatibility, interoperability and other features as required by the contract”; and be fit for the particular purpose which the consumer requires.

The burden of proof with regard to the conformity of the content to the contract lies on the supplier (Article 10). Suppliers are liable to consumers for (Article 9):

- any failure to supply the digital content; any lack of conformity; and, under contracts to supply digital content over a period of time, any lack of conformity that occurs during that period.

The consumer enjoys three possible remedies (Article 12):

- an entitlement to have the digital content brought into conformity with terms of the contract; or
- an appropriate reduction in price; or
- a right to terminate the contract.

At the time of writing, it is anticipated that the Member States will have agreed the final text of the proposal in December 2017.

29 [Q 39](#)

30 [Q 31](#)

31 [Q 1](#)

18. The Minister echoed Mr Moorey's views: "We in Britain have a proud history of consumer protection and consumer rights, and we have shared this with the EU and vice versa". She added that this "interplay" between the EU and the UK had "been very important in developing the protection regime that we enjoy".<sup>32</sup>

### *Conclusions*

19. **We agree with the Minister that the cooperation between the EU and the UK on the development of the consumer protection *acquis* has played an important role in shaping this area of law. The UK's influence is illustrated by the recent proposal introducing pan-European consumer protection rights addressing the sale of digital content, which draws heavily for its inspiration on the rights introduced in the UK by the Consumer Rights Act 2015.**
20. **As a result of this interaction, the EU's consumer protection *acquis* and UK national law are interwoven in a complex and interconnected fashion. Citizens' legal protections are strengthened by a harmonised system of consumer protection. While the many items of EU law provide the basis for consumer protection in the UK, our national law often provides for a higher degree of protection.**

## CHAPTER 3: SIGNIFICANT AREAS OF THE *ACQUIS*

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### General areas of the *acquis*

21. Mr Pete Moorey of Which? pointed to the importance of the EU's *acquis* "across a whole range of issues". These included: "unfair commercial practices, which come under the unfair commercial practices Directive; ensuring better information provision through a number of regimes under the consumer rights Directive; [and] distance shopping, which comes under the consumer rights Directive" (see Box 2).<sup>33</sup>
22. He also raised the issue of "how to maintain rights in relation to cross-border purchases and UK consumers' rights when they are holidaying abroad", and membership of the EU's agencies.<sup>34</sup>

### The ADR Directive

23. Mr Lewis Shand Smith of the Ombudsman Services referred to the importance of the ADR Directive and the accompanying Regulation creating the online dispute resolution platform (see Box 3). This legislation "requires that wherever there is a contract for the sale of goods and services anywhere in the EU, Member States must provide alternative dispute resolution for consumers if something goes wrong". Turning to the online dispute resolution platform, he said that it "operates in every Member State", and, "if customers buy goods online and something goes wrong, they go on the platform and from there they are directed to the relevant ombudsman".<sup>35</sup>

### Three important aspects of the *acquis*

24. Mr Leon Livermore, of the Chartered Trading Standards Institute, highlighted three important aspects of the EU's *acquis*. First, he said that the EU provided the "legislative framework within which we work". This framework "facilitates the free movement of goods, but it also facilitates the free movement of information ... a lot of consumer protection is based on relationships with colleagues abroad".<sup>36</sup>
25. Second, Mr Livermore highlighted the facilitation of information sharing. National trading standards teams gathered the relevant information about, for example, "telephone and postal scams", and passed this on to local authorities who, in turn, collected that information and passed it "to colleague enforcement agencies in the rest of Europe". This brought the "benefit" that cross-border problems were "tackled at both ends".<sup>37</sup>
26. The third way the EU facilitates the enforcement of trading standards is through "investing in infrastructure". Mr Livermore concluded, overall, that "if you want effective enforcement and you do not want the UK to become a soft target for rogue traders ... we need to maintain the protections that we have now".<sup>38</sup> When asked for a specific example, he mentioned "RAPEX, which is really good example of European cooperation ... It is a terrific system".<sup>39</sup> RAPEX is described in Box 5.

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33 [Q 1](#)

34 [Q 2](#)

35 [Q 11](#)

36 [Q 21](#)

37 [Q 21](#)

38 [Q 21](#)

39 [Q 24](#)



### Box 5: The Rapid Alert System (RAPEX)

The EU's RAPEX (or Rapid Alert System) illustrates the three important aspects of the EU's consumer protection *acquis* highlighted by Mr Leon Livermore.

Under the RAPEX system, the Commission publishes a weekly summary of the consumer protection related alerts reported to it by the relevant national authorities, such as local authorities and national trading standards bodies. The Commission's weekly overview includes information on: dangerous products found; any risks to consumers that have been identified; and any measures taken in the notifying country in order to prevent or restrict their marketing or use.

The weekly summary also includes information on those other countries where the same product has been found, and whether any further measures have been taken.<sup>40</sup>

27. Anticipating the Brexit negotiations, Mr Livermore argued that “whatever trade deal we put in place, consumer protection and market surveillance are key elements of that”. His “greatest fear” was if the Government’s focus fell on “legislation rather than infrastructure and you try to deal with infrastructure later, we will have missed the boat”.<sup>41</sup>

#### *The Consumer Protection Cooperation Regulation*

28. Mr Jason Freeman of the CMA pointed to the significance of the Consumer Protection Cooperation (CPC) Regulation. He explained that under the CPC Regulation, the CMA had “a statutory function ... to ensure that the cross-border enforcement system works smoothly” (see Box 6).<sup>42</sup> His colleague, Mr Roland Green, argued that while the CPC Regulation gave rise to “frustrations ... at a very core level it is useful to have a mechanism where there is regular discussion and cooperation to be aware of the problems that occur in different states”.<sup>43</sup>
29. The CMA’s “primary” concern was being able to continue to take effective cross-border enforcement action after the UK leaves the EU. Mr Freeman warned that “sometimes outside the European Union ... there are legal difficulties or practical difficulties around evidence sharing, and that can inhibit the effective execution of enforcement work”. To avoid this problem he suggested that a “number of measures in respect of cross-border enforcement [would] need to be negotiated between the UK and the EU as we seek to leave”.<sup>44</sup> He concluded, however, that if the CPC Regulation continued in place in the UK after Brexit, “then cross-border consumer protection should not be too affected”.<sup>45</sup>

40 European Commission ‘Rapid Alert System: Weekly Reports’: [https://ec.europa.eu/consumers/consumers\\_safety/safety\\_products/rapex/alerts/?event=main.listNotifications](https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=main.listNotifications) [accessed 20 November 2017]

41 [Q 28](#)

42 [Q 29](#)

43 [Q 37](#)

44 [Q 29](#)

45 [Q 38](#)



### Box 6: The Consumer Protection Cooperation Regulation 2006/2004

In the UK, the Competition and Markets Authority (the CMA), formerly the Office of Fair Trading, is responsible for regulating UK markets and promoting competition in the interests of business, consumers and the economy. It has specific responsibility to enforce consumer protection legislation in the UK and cooperates, to that end, with similar national organisations within the EU.

The CMA's role in enforcing the EU's consumer protection rules stems from, and is facilitated by the EU's Consumer Protection Cooperation Regulation.<sup>46</sup> The CPC Regulation provides the mechanism for the exchange of information between national enforcement bodies such as the CMA and, where necessary, and empowers them to bring legal action to enforce consumer protection laws.

In May 2016, the Commission brought forward a new Regulation aimed at developing and modernising the CPC's mechanisms for cooperation.<sup>47</sup> The Commission proposed the introduction of two new mutual assistance mechanisms designed to facilitate cooperation between National Enforcement Bodies (NEBs) such as the CMA. In addition, the proposal empowers them, where necessary, to take enforcement action to stop cross-border infringements of the EU consumer *acquis*.

The first new mutual assistance mechanism deals with simple requests for information. NEBs are required to cooperate in an effort "to establish whether an intra-Union" consumer protection infringement has occurred. There are limited grounds for refusal.<sup>48</sup> The second mutual assistance mechanism deals with requests for enforcement measures, under which NEBs are required to take "all necessary measures to bring about the cessation or prohibition" of an intra-Union breach of the EU's consumer protection rules.<sup>49</sup>

The Member States are obliged to ensure that the NEBs receive adequate resources to ensure that they can meet these requests. The proposed Regulation also sets out the minimum powers that all NEBs must enjoy, which include:

- the power to access all relevant documentation;
- the power to compel public bodies, companies and individuals to supply information;
- the power to enter and inspect premises;
- the power to purchase goods in order to detect infringements and gather evidence;
- the power to purchase goods "under a cover identity" in order to detect infringements and gather evidence;

46 Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) ([OJ L 364](#), 9 December 2004, pp 1–11)

47 Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws, ([COM\(2016\)283](#), 25 May 2016)

48 Article 14, Proposal for a Regulation of the European parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws ([COM\(2016\)283](#), 25 May 2016)

49 Article 12, Proposal for a Regulation of the European parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws ([COM\(2016\)283](#), 25 May 2016)

- the power to adopt interim measures to prevent risks to consumers;
- the power to close down websites; and
- the power to impose penalties and fines.

It is anticipated that the Member States will have agreed the new Regulation in December 2017. Importantly, the new text includes a provision that encourages cooperation with third countries (that is, non-EU Member States).<sup>50</sup>

30. When asked for an example of the CMA's work facilitated by the CPC Regulation, Mr Freeman referred to its 2015 investigation to improve Europe's car rental market (see Box 7). He said that this investigation achieved "concrete changes", which led to "about £127 million of benefit to UK consumers".<sup>51</sup>
31. Mr Freeman's colleague Mr Roland Green agreed. He said that the "substantive value of the [CPC Regulation] is in providing mechanisms ... for evidence sharing and obtaining evidence, reciprocally and mutually, across different states and for taking enforcement actions". The maintenance, post-Brexit, of these elements of the CPC Regulation "would be desirable and we would expect that it should be possible to do so".<sup>52</sup>

#### **Box 7: Example of the CMA's pan-European cooperation on consumer protection**

In 2015 the Competition and Markets Authority (CMA) led a European-wide project, facilitated by the European Commission and involving Member State consumer protection authorities, which resulted in five leading EU car rental companies committing to improving the way they deal with their customers.

The companies—Avis Budget, Enterprise Rent-a-Car, Europcar, Sixt and Hertz, which in total represent around two thirds of the UK and EU markets—agreed to introduce the following improvements:

- Improved transparency when making a website booking or reservation: consumers will now have more of the key information they need to shop around for the best deal for them.
- Better information at the booking stage about optional waiver and insurance products.
- More upfront information about pre- and post-rental vehicle inspection processes.
- Improved notification of, and dispute processes for, any charges for damage.

Each company has committed to make these changes, while taking account of the standard of their existing practices, and each has made a commitment to improve its practices overall as a result.

50 Article 40, Proposal for a Regulation of the European parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2016)283, 25 May 2016)

51 [Q 29](#)

52 [Q 37](#)

Nisha Arora, Senior Director of the CMA, said:

“We welcome the improvements made by the leading EU car rental companies to ensure that consumers are given clearer information upfront about their rental. These changes go a long way to ensuring that consumers know exactly what they are getting when they rent a car.

“The CMA, together with the European Commission and our EU counterparts have worked constructively with the leading EU car rental companies to reach agreements on revised practices that will benefit motorists who rent vehicles in the UK and abroad. The improvements by these five businesses now set a benchmark for the rest of the industry to follow.”

In the UK, the CMA has worked closely with the trade association the British Vehicle Rental and Leasing Association (BVRLA). Following a review of its UK Code of Conduct, significant improvements similar to those adopted by the main car hire businesses have been adopted into the Code, to which companies representing the vast majority of the UK car rental fleet are signatories. The revised Code was launched at the beginning of 2016.

At a European level the CMA, European Commission and enforcement authorities in other EU Member States worked with Leaseurope, the umbrella body for the European car rental trade associations. Leaseurope has adopted the general principles underlying the agreed improvements into its Code of Conduct.

Source: Competition and Markets Authority, Press Release, *Car rental customers set to drive off with better deals*, 13 July 2015: <https://www.gov.uk/government/news/car-rental-customers-set-to-drive-off-with-better-deals> [accessed 20 November 2017]

### *CEN and CENELEC*

32. Dr Scott Steedman CBE, Director of Standards at the British Standards Institute (BSI), cited the importance of two European-wide Standards Organisations, CEN and CENELEC (see Box 8). He pointed out that while CEN and CENELEC were not formally part of the EU, the Commission provided funding and “grants them the exclusive right to label a business standard an ‘EN’”. Once a product receives such a designation, national standards bodies such as the BSI are “committed to adopting and implementing that standard”. He added that “critically” national standards bodies are also committed “to withdrawing any conflicting standards in order to ensure that we are all operating to a single standard with no barriers to trade” across its 34<sup>53</sup> member countries.<sup>54</sup>

53 The members are drawn from: the 28 EU Member States; the three European Free Trade Association (EFTA) States (Iceland, Norway and Switzerland); and, three EU candidate countries: Serbia, Turkey and the Former Yugoslav Republic of Macedonia.

54 [Q 22](#)

### Box 8: European product standardisation bodies

All products and services that citizens buy and use in their everyday lives have to meet certain standards of safety and quality. In Europe, these standards are developed and agreed by the three officially recognised European Standardisation Organizations: the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standards Institute (ETSI).

The close collaboration between CEN and CENELEC was consolidated at the start of 2010 by the creation of a common CEN-CENELEC Management Centre (CCMC) in Brussels.

By setting common standards that are applied across the whole of the European single market, CEN and CENELEC ensure the protection of consumers, facilitate cross-border trade, ensure the interoperability of products, encourage innovation and technological development, include environmental protection and enable businesses to grow. Products and services that meet these European Standards (ENs) can be offered and sold in all of the participating countries.

CEN and CENELEC bring together the national standards agencies of 34 countries. The network involves business federations, commercial and consumer organizations, environmental groups and other societal stakeholders. More than 60,000 technical experts from industry, research, academia and other backgrounds are directly involved in their work.

Together, CEN and CENELEC provide a platform for the development of European Standards and other technical specifications across a wide range of sectors. They work closely with the European Commission to ensure that standards correspond with any relevant EU legislation.

CEN and CENELEC also cooperate with respectively the International Organization for Standardisation (ISO) and the International Electrotechnical Commission (IEC) to reach agreements on common standards that can be applied throughout the whole world, thereby facilitating international trade.

*Source: CEN and CENELEC, 'About us', 2017: <https://www.cencenelec.eu/aboutus/Pages/default.aspx> [accessed 15 November 2017]*

33. Dr Scott Steedman said that the European standardisation system was built on “reciprocity of market access”. Provided the UK remained a member of CEN and CENELEC “we will immediately carry on as today, working on the European standards and influencing them for the benefit of consumers and industry”. But, he warned, it “would be extremely damaging”<sup>55</sup> if the UK was to leave these bodies: “There would be quite a serious risk that our industries would use European standards because they provide the easiest market access route to the EU” without having had any “influence over the shaping of those industry standards”.<sup>56</sup>
34. The danger, according to Dr Steedman, lay in the fact that CEN and CENELEC’s “statutes and the eligibility for membership is described ... in the form of, ‘an EU member, an accession country or an EFTA country’”. Their rules “were not written imagining that there would be a country in the situation of the UK”.<sup>57</sup> Nevertheless, Dr Steedman said that it was his

55 [Q 22](#)

56 [Q 23](#)

57 [Q 26](#)

“ambition [and] expectation”<sup>58</sup> that the UK would remain a full member of these bodies, and he was “confident” that a form of words could be found to accommodate the UK.<sup>59</sup>

35. Leon Livermore also told us that “a commitment to retain membership of CEN and CENELEC would be extremely helpful”.<sup>60</sup>

### *Relationships with regulatory agencies*

36. Mr Pete Moorey of Which? also raised the importance of the UK’s post-Brexit relationships with the EU’s executive and regulatory agencies.<sup>61</sup> He argued that this issue “clearly” needs to be a priority. He mentioned specifically: “the European Food Safety Authority and the medicines and aviation agencies”.<sup>62</sup>
37. Mr Chris Woolard of the FCA emphasised the importance of maintaining relationships with national regulators post-Brexit: “We see it as essential, whatever the nature of the settlement that is reached, still to have very strong relationships in place between us and our fellow regulators in Europe.”<sup>63</sup>

### *Conclusions*

38. **Witnesses with diverse areas of operation and expertise have highlighted the range and significance of individual items of EU legislation. It is clear that beyond setting the baseline for the consumer protection standards that individuals enjoy, EU legislation also plays a crucial role in facilitating a range of cross-border cooperative mechanisms designed to police consumer protection within the Single Market.**
39. **While the range of legislation identified by our witnesses is broad, another theme is the importance of the agencies, networks and infrastructure, largely created by EU law, which, cooperate on a reciprocal basis, develop policy and facilitate information sharing and exchange between national and EU bodies as a means of protecting consumers across the EU.**
40. **Of particular importance in this regard is the Consumer Protection Cooperation Regulation which encourages cooperation between national bodies tasked with protecting consumers. We note that the latest iteration of this legislation which is due to be agreed by the Council shortly, includes a provision that encourages cooperation with non-EU Member States.**
41. **With regard to the international standards organisations CEN and CENELEC, we acknowledge that they are not formally EU bodies, and understand that the resolution of the UK’s individual membership of these bodies post-Brexit is not directly within the Government’s gift. Nevertheless, we call on the Government to support the BSI’s efforts to amend these bodies’ statutes to accommodate the UK’s new status outside the EU and invite the Government to provide an update on this important issue when it responds to this report.**

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58 [Q 22](#)

59 [Q 26](#)

60 [Q 28](#)

61 [Q 2](#)

62 [Q 4](#)

63 [Q 43](#)

## CHAPTER 4: THE GOVERNMENT'S APPROACH TO CONSUMER PROTECTION AND BREXIT

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### Government engagement with stakeholders

42. Witnesses were concerned by the lack of prominence given to consumer protection by the Government in its public plans for Brexit. Which? said that they were “surprised” that the issue was not covered in the Government’s February White Paper, and “that it was not one of the [Government’s] 12 negotiating principles”. Mr Moorey called on the Government to add the subject matter as a “13th principle for the negotiations, which should endeavour to maintain and enhance consumer rights”.<sup>64</sup>
43. Matthew Upton, of the Citizens Advice Bureau (CAB), argued that during the negotiation period the Government “needed an ongoing dialogue with organisations like us”. He said that it was “absolutely essential” that the Government went out and talked “to consumers directly to hear their concerns”.<sup>65</sup>
44. Dr Steedman of the BSI did not believe that the “standards dimension is well understood or even visible” to the Government. He said that he had “good relations with individual civil servants in different departments”, but “we have surprisingly little connection with Ministers”. He confirmed that the BSI had offered its support to the Government during the Brexit negotiations, in order “to ensure that we avoid sleepwalking into problems”.<sup>66</sup>
45. Mr Lewis Shand Smith, of the Ombudsman Services, expressed similar reservations: “It does concern me that the Government do not seem to be aware of the consumer protection that comes through our membership of the EU”. But while he was “nervous” that the Government had not yet addressed the issue in public, he believed that it did “have it in mind”.<sup>67</sup>
46. Mr Roland Green of the CMA, was less concerned when giving evidence in September 2017: “I am aware that the Government are aware of the importance of the rights of consumers”.<sup>68</sup>
47. The Minister said that she respected the views of the “well-informed and active groups” who gave evidence to us early in our inquiry. But she pointed to recent “significant efforts” by her Department “to engage with consumer organisations” on Brexit. She sought to reassure us that “their responses to [our] inquiry point to the need for us to engage in a more regular and systematic manner than we have done hitherto”. She promised that consumer groups would be invited to meet the Government a “little more regularly on a systematic basis”.<sup>69</sup>
48. **At the outset of our inquiry, witnesses were clearly concerned that the Government had not yet engaged sufficiently with bodies that deal with consumer affairs. However, by September, when the Competition and Markets Authority gave evidence, there was a marked change in tone and the CMA suggested that the Government**

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64 [Q 3](#)

65 [Q 4](#)

66 [Q 25](#)

67 [Q 13](#)

68 [Q 34](#)

69 [Q 52](#)



**had improved its contact with relevant stakeholders. This increased level of engagement was confirmed by the Minister in October.**

49. **We welcome the Minister’s and the Department’s promise to engage with stakeholders and consumer groups throughout the Brexit process on a regular and systematic basis, and hope that they are able to fulfil this wish.**

### **The utility of the European Union (Withdrawal) Bill**

50. In March 2017 the Government published its White Paper *Legislating for the UK’s withdrawal from the European Union*. In a section that addressed consumer protection specifically (see Box 9), it promised that the so-called Great Repeal Bill would “preserve the relevant EU [consumer protection] law to ensure that domestic law functions properly after exit ... It will help ensure that UK consumers’ rights continue to be robust after we have left the EU”. What is now the European Union (Withdrawal) Bill is currently making its way through Parliament (see Box 10).

### **Box 9: Legislating for the UK’s withdrawal from the European Union: Consumer Protection**

In its March 2017 White Paper *Legislating for the UK’s withdrawal from the European Union*, the Government said:

“UK consumer law predates EU competence in this area, and goes beyond EU minimum requirements in a number of respects. For example, the right for UK consumers to reject a faulty good within a 30-day period is a UK-level protection, and traders are limited to a single attempt to repair or replace a faulty product before having to offer a refund. In addition, the UK has legislated to make sure that consumers have clear rights when buying digital content.

“Where consumer protections are set at the EU level and thus already part of UK law, the Great Repeal Bill will preserve the relevant EU law to ensure domestic law functions properly after exit. This stability will give businesses and consumers clarity and confidence in their rights and obligations, facilitating the day-to-day transactions that keep the UK economy strong. It will help ensure that UK consumers’ rights continue to be robust after we have left the EU.”

Source: Department for Exiting the European Union, *Legislating for the UK’s Withdrawal from the European Union*, Cm 9446, March 2017: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/604516/Great\\_repeal\\_bill\\_white\\_paper\\_accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf) [accessed 20 November 2017]

51. All our witnesses welcomed the Government’s aspiration to continue robust consumer protections after Brexit. But they also raised concerns.
52. Mr Chris Woolard of the FCA welcomed the Bill as “a sensible approach”,<sup>70</sup> and stated that “the idea is to onshore the protections that UK consumers have today”. He believed that “in theory it should not open up any further risk to UK consumers than might exist today”.<sup>71</sup> He argued that the Government’s “ambition” of ensuring robust consumer protection rights post-Brexit was “broadly capable of delivery”, but he warned that the “act of onshoring will not solve all the problems”. For example, he noted that at

70 [Q 48](#)

71 [Q 43](#)

present UK consumers who purchase faulty products from firms operating in other Member States can access the compensation scheme in that other EU state, but he was not “sure how onshoring can automatically protect that right”.<sup>72</sup>

53. Mr Pete Moorey of Which? said: “We are very pleased ... that in the great repeal Bill White Paper there is a strong commitment to consumer protection and consumer rights”.<sup>73</sup> He suggested that “it is entirely practical for the *acquis* to be lifted and shifted ... and to be adopted into UK law”.<sup>74</sup> However, while he was “pleased that the Government have committed to lift and shift these important protections and to put them into UK law”, he was concerned that “there should be no watering down of those rights”.<sup>75</sup> He did not want to see “Brexit being used as an opportunity to deregulate very important existing consumer protections”.<sup>76</sup>
54. Which? concluded that the “critical element” of the Government’s plans for dealing with Brexit must be “enforcement”, and “ensuring that enforcement agencies have the powers to take action when breaches of consumer law are found”.<sup>77</sup>
55. Mr Lewis Shand Smith suggested that there “might be a public revolt” if the Government used Brexit as an opportunity to reduce current consumer protections in the UK, and predicted that “newspaper commentators and the media who produce consumer programmes will highlight this, and that would be very uncomfortable for the Government”.<sup>78</sup> The “big issue” for him was “how can we develop and maintain cross-border protections?”. He suggested that “we need to find ways to do that that are good not only for British consumers but for those who are selling goods and services into the UK and want to do so into other European member states”.<sup>79</sup>

### Box 10: The European Union (Withdrawal) Bill

If the European Union (Withdrawal) Bill only repealed the European Communities Act (ECA) 1972, some EU law that currently applies in UK law by virtue of the ECA would cease to have effect, because the Act is not itself an originating source of EU law, but is rather the “conduit pipe”<sup>80</sup> through which EU law flows into UK domestic law.

Section 2(1) ECA provides that directly applicable law (such as EU Regulations) has effect in UK law without the need to pass specific UK implementing legislation. If the ECA were repealed and no further action was taken, this directly applicable EU law would cease to apply in UK law, leaving gaps on the statute book. Other types of EU law (such as EU Directives) have to be given effect in the UK through domestic laws. This has generally been done using section 2(2) of the ECA, which provides ministers, including in the devolved administrations, with powers to make secondary legislation to implement EU obligations. If the ECA were repealed and no further action was taken, all of the secondary legislation made under it would fall away and cease to be part of the UK statute book, leaving significant gaps.

72 [Q 48](#)

73 [Q 3](#)

74 [Q 6](#)

75 [Q 1](#)

76 [Q 5](#)

77 [Q 1](#)

78 [Q 15](#)

79 [Q 16](#)



To avoid such gaps, the Bill converts the body of existing EU law into domestic law. After withdrawal, because the supremacy of EU law will have ended, Parliament (and, where appropriate, the devolved legislatures) will be able to decide which elements of EU law to keep, amend or repeal. This body of converted EU law and preserved domestic law is referred to in the Bill collectively as ‘retained EU law’.

This approach means that, as a general rule, the same rules and laws will apply on the day after the UK leaves the EU as before:

- the Bill converts directly applicable EU law (e.g. EU regulations) into UK law;
- it preserves all the laws which have been made in the UK to implement EU obligations (e.g. in EU directives);
- it incorporates any other rights which are available in domestic law by virtue of section 2(1) of the ECA, including the rights contained in the EU treaties, that can currently be relied on directly in national law without the need for specific implementing measures; and
- the Bill provides that pre-exit case law of the Court of Justice of the European Union (CJEU) be given the same binding, or precedent, status in UK courts as decisions of the Supreme Court or the High Court of Justiciary in Scotland.

Source: [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill 5 (2017–19)-EN]

56. Matthew Upton of the Citizens Advice Bureau (CAB) described the Bill as “fantastic” and a “great start”, but he warned that “if the cross-border agreements are not there to back it up it is not worth as much as it would suggest”.<sup>81</sup> Given the “complexity” of this area of European cooperation, he raised “the potential concern that things could ... be subtly unpicked over the next couple of years”.<sup>82</sup>
57. Mr Leon Livermore of the Trading Standards Institute fully supported “the Government’s stated aim not to lose any of our current protections”,<sup>83</sup> but warned that “legislation is just a starting point” because EU cooperation on consumer protection was “underpinned by the mechanisms that we put in place, mechanisms that we co-invest in with European partners”.<sup>84</sup>
58. The Minister described the EU (Withdrawal) Bill as the “main vehicle for transposing EU law into British law”. In her view, on the day after Brexit, UK consumers “will start ... with exactly the same protections in place”.<sup>85</sup> She explained that “at the moment under [the Bill] any UK consumer will have the same rights” and, in those instances where UK consumers “have purchased something cross-border”, she said that the “UK system will guarantee those rights”.<sup>86</sup>

80 *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union* (Appellant) [2017] UKSC 5 <https://www.supremecourt.uk/cases/uksc-2016-0196.html>

81 [Q 2](#)

82 [Q 5](#)

83 [Q 21](#)

84 [Q 26](#)

85 [Q 51](#)

86 [Q 52](#)

*Conclusions*

59. **All our witnesses praised the Government's commitment to robust consumer protection rights post-Brexit and welcomed the European Union (Withdrawal) Bill as the means for achieving that end. The weight of our evidence suggests that the consumer protection *acquis* can be incorporated here via the Bill.**
60. **We also welcome the Minister's promise that the UK system will guarantee the rights of those UK consumers who have made cross-border purchases. However, a significant question remains about the protection and enforceability of the consumer protection rights of those UK citizens who visit the EU27 post-Brexit. We ask the Minister to address this specific point in the Government's response to this report.**

*Minister's response to the risk of a reduction in the UK's consumer protection standards*

61. When we put witnesses' concerns that Brexit might be used as a pretence for reducing consumer protection in the UK to the Minister, she replied: "I can think of nothing that we would be happy to abandon ... I can think of nothing that we would want to leave behind".<sup>87</sup>
62. The Minister emphasised that the Government was "keen to assure everybody that there will be no dilution [of consumer protection rights] on account of our leaving the European Union".<sup>88</sup> She argued that this area of EU law was "probably more set than in others", adding that "I am quite certain that none of my colleagues in government wish to see the process of Brexit result in a reduction in consumer protections and rights".<sup>89</sup>
63. Looking beyond Brexit, the Minister said that "it will be up to the UK Government to ensure that there is no dilution of consumer rights, standards and protections". But she did not "think that achieving that happy state is dependent on either membership of the European Union or cooperation with it". She concluded that if, for example, "there were areas of policy where we felt as a country that consumers needed greater protection than the consensus within the European Union was willing to concede", she would wish "to preserve the right within our own governance to exercise that right".<sup>90</sup>

*Conclusions*

64. **The Minister offered us repeated, clear and unambiguous statements that the UK's departure from the EU will not lead to any reduction in the standards of consumer protection currently enjoyed by consumers in the UK. But she did not address the question of how the Government will maintain access to the cooperation mechanisms that facilitate the protection of European consumers, which are intrinsic to the maintenance and development of standards across the EU. The UK has had considerable influence within the field of consumer protection hitherto, and it is important that its access to this EU cooperation mechanisms should be maintained post-Brexit.**

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87 [Q 51](#)

88 [Q 53](#)

89 [Q 55](#)

90 [Q 53](#)

**We therefore call on the Government, in its response to this report, to explain how it will maintain this access and influence.**

**Minister's response to the loss of reciprocal cross-border cooperation mechanisms**

65. The Minister said that our witnesses had raised “some excellent points about the importance of ensuring that a good process for regular communication, consultation and exchange is available to us and our European colleagues post Brexit”.<sup>91</sup> She acknowledged that “it would be complacent to assume that Brexit poses no threat” to cross-border cooperation on consumer protection, and she hoped that the outcome of the negotiations will “be a very close association and continuing involvement with European bodies” such as the network of national bodies responsible for policing consumer protection operating under the auspices of the CPC Regulation.<sup>92</sup>
66. The Minister understood that the Government needed to work “carefully and closely ... with our European colleagues with regard to cross-border trade and purchasing to ensure that that reciprocity continues” after the UK leaves the EU.<sup>93</sup> The Minister expected “the same relationship, if not a closer one, with our European colleagues post Brexit”, but she felt unable “to comment on its exact nature”.<sup>94</sup>
67. Her “goal” for the negotiations was “that we continue to benefit from the developments within the European Union, and that we are in a position to continue to share our expertise with it post Brexit”. Again, she was unable to “comment on the nature of how we would get to that point because that really is a matter for the negotiations”.<sup>95</sup> She concluded that “we want a close association—a deep and special partnership with Europe post Brexit ... but the precise mechanisms cannot be identified at this stage”.<sup>96</sup>
68. She did, however, acknowledge the limitations of the European Union (Withdrawal) Bill, in addressing the many reciprocal arrangements that operate in this area. She understood that this was “the area that is perhaps not absolutely guaranteeable by the UK Government alone”.<sup>97</sup>
69. Turning to the CPC Regulation specifically, the Deputy Director, Consumer Policy in the Department for Business, Energy and Industrial Strategy, Ms Kirstin Green, described the CPC Regulation as operating “a pretty good system ... it is not perfect, but it is pretty good”. She said that the Government’s “high priority is to develop a way to continue a form of cooperation between enforcement agencies post Brexit”, but the detail as to how this might be achieved, would be “a matter for the negotiations about the future deep and special partnership”.<sup>98</sup>
70. When asked whether the Government intended to make use of the provision in the reformed CPC Regulation that permits cooperation with third countries, the Minister said that “it would certainly be something that my

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91 [Q 51](#)

92 [Q 51](#)

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98 [Q 51](#)

department would advocate”.<sup>99</sup> The Deputy Director was more cautious: “While I cannot say that we will be able to negotiate something identical to what we have the moment, our ambitions certainly will be high to negotiate some form of future cooperation for enforcement.”<sup>100</sup>

71. With regard to the UK’s membership of the EU’s regulatory agencies post-Brexit, the Minister said: “I would hope that we will conclude with the closest possible involvement in all these bodies.” She emphasised that the Government wanted “a close association—a deep and special partnership with Europe—post Brexit ... but the precise mechanisms cannot be identified at this stage”.<sup>101</sup>
72. When pressed for detail as to how the UK would cooperate with the range of agencies operating within the field of consumer protection post-Brexit,<sup>102</sup> the Minister replied: “‘As close as possible’ would be the only answer that I could honestly give, because ... there are many discussions to be had. She continued that “I am sure we all have the greatest respect for those organisations—I know that I certainly do—and we would want to continue a very close association with them.”<sup>103</sup>

### *Conclusions*

73. **The Minister was sympathetic to the concerns of our witnesses about the loss of the EU based reciprocal arrangements that police EU consumer protection law, of which the Consumer Protection Cooperation Regulation is particularly important. Nevertheless, she was unable to provide us with any detail as to how the Government might secure their application to the UK post-Brexit and we question whether the Government has given any thought to finding a solution to this problem.**
74. **Reflecting the evidence we received throughout this inquiry, both the Minister and the Deputy Director in the Department acknowledged the importance of the Consumer Protection Cooperation Regulation and classed its post-Brexit operation in the UK as a high priority for the negotiations. We agree.**
75. **We call on the Government to make every effort to engage the provision in the reformed Regulation (which will shortly be agreed by the Council) that encourages cooperation with non-EU Member States.**
76. **Our evidence also pointed to the important role played in consumer protection by a number of the EU’s Regulatory Agencies. We are concerned that when pressed, beyond advocating a “special and deep relationship” the Minister was unable to offer us any plan as to how the UK might secure access and/or membership of these agencies post-Brexit.**

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99 [Q 53](#)

100 [Q 51](#)

101 [Q 53](#)

102 Principally the European Medicines Agency; the European Food Standards Agency and the European Aviation Agency.

103 [Q 53](#)

77. **We ask the Government to provide us with a clear approach as to how it will secure the UK's post-Brexit access to the EU's reciprocal cross-border mechanisms, resources and infrastructure that police European consumer protection standards.**

### Pressure on national regulators

78. Mr Leon Livermore, of the Chartered Trading Standards Institute warned us that another of the “big challenges” posed by Brexit in the UK was that it “will be such a big focus that we might take our eye off some of the domestic issues facing market surveillance and consumer protection”. He argued that the UK system of regulation “is creaking, and it will not take a lot to push it over the edge”.<sup>104</sup>
79. Mr Lewis Shand Smith said that “even within the UK at the moment, there is difficulty with enforceability”. He argued that “trading standards in our councils are finding it difficult to provide enforcement at the moment because of cutbacks”.<sup>105</sup> He feared that “consumer protection may not be as good as it could be at the moment”, and predicted that “after Brexit it could be worse”.<sup>106</sup>
80. Mr Pete Moorey of Which? expressed similar concerns: “Trading standards, the Competition and Markets Authority and other agencies ... are not working as effectively as they should.” He believed that the UK’s regulators “will be under greater pressure as a result of Brexit”.<sup>107</sup>
81. Mr Chris Woolard of the FCA agreed that Brexit posed a “very significant challenge for our organisation and the financial system as a whole”. He continued: “It is fair to say that we are going to have to scale up significantly the resource we are spending on the Brexit process.” This, in turn, “will place significant demands on us and we are doing it against a very tight market”. He told us that the FCA were planning how to prioritise resources, so as to “put the right effort into dealing with Brexit”, and concluded that coping with Brexit “is going to be a really significant task for us as an organisation and we should not underestimate it. It will involve some very hard choices.”<sup>108</sup>
82. The Minister said that our witnesses’ testimony gave rise to “concerns”, but added that trading standards “is the preserve of local government, and it is obviously down to local government to order its priorities and so forth”. Nevertheless, she explained that her Department was responsible for funding a “national trading standards body [that] gives advice to local organisations”, and she had sought to protect this body’s budget. She said that it was “possibly through those offices that we might seek to improve the resourcing available to consumer enforcement prior to Brexit”, although she added that “there has been absolutely no decision or approval as yet”.<sup>109</sup>
83. The Minister also addressed the post-Brexit role of the CMA: “The CMA’s role will undoubtedly increase and change following Brexit, and it is very

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104 [Q 23](#)

105 [Q 17](#)

106 [Q 17](#)

107 [Q 6](#)

108 [Q 49](#)

109 [Q 55](#)

unlikely that it would be able to manage that change post Brexit without additional resources.”<sup>110</sup>

### *Conclusions*

84. **We are concerned by the clear evidence from the national regulatory and trading standards bodies that they are already struggling to fulfil their important roles because of financial restraints even before the additional complications and challenges of Brexit. We were particularly struck by the implications of the Financial Conduct Authority’s testimony that coping with Brexit will “involve some very hard choices”.**
85. **Despite placing the responsibility on local authorities, the Minister seemed sympathetic to our witnesses’ views, but we are concerned that she was not able to offer us any solutions to this important problem. We encourage the Government to come forward with a plan to address this problem urgently.**
86. **We urge the Government, when it responds to this report, to set out a clear plan aimed at alleviating the pressures on national regulators, and addressing how they will continue to interact in the interests of consumers, post-Brexit, with other national regulators in the EU’s remaining 27 Member States.**



## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### The EU's consumer protection *acquis* and the UK

1. We agree with the Minister that the cooperation between the EU and the UK on the development of the consumer protection *acquis* has played an important role in shaping this area of law. The UK's influence is illustrated by the recent proposal introducing pan-European consumer protection rights addressing the sale of digital content, which draws heavily for its inspiration on the rights introduced in the UK by the Consumer Rights Act 2015. (Paragraph 19)
2. As a result of this interaction, the EU's consumer protection *acquis* and UK national law are interwoven in a complex and interconnected fashion. Citizens' legal protections are strengthened by a harmonised system of consumer protection. While the many items of EU law provide the basis for consumer protection in the UK, our national law often provides for a higher degree of protection. (Paragraph 20)

### Significant areas of the *acquis*

3. Witnesses with diverse areas of operation and expertise have highlighted the range and significance of individual items of EU legislation. It is clear that beyond setting the baseline for the consumer protection standards that individuals enjoy, EU legislation also plays a crucial role in facilitating a range of cross-border cooperative mechanisms designed to police consumer protection within the Single Market. (Paragraph 38)
4. While the range of legislation identified by our witnesses is broad, another theme is the importance of the agencies, networks and infrastructure, largely created by EU law, which, cooperate on a reciprocal basis, develop policy and facilitate information sharing and exchange between national and EU bodies as a means of protecting consumers across the EU. (Paragraph 39)
5. Of particular importance in this regard is the Consumer Protection Cooperation Regulation which encourages cooperation between national bodies tasked with protecting consumers. We note that the latest iteration of this legislation which is due to be agreed by the Council shortly, includes a provision that encourages cooperation with non-EU Member States. (Paragraph 40)
6. With regard to the international standards organisations CEN and CENELEC, we acknowledge that they are not formally EU bodies, and understand that the resolution of the UK's individual membership of these bodies post-Brexit is not directly within the Government's gift. Nevertheless, we call on the Government to support the BSI's efforts to amend these bodies' statutes to accommodate the UK's new status outside the EU and invite the Government to provide an update on this important issue when it responds to this report. (Paragraph 41)

### The Government's approach to consumer protection and Brexit

7. At the outset of our inquiry, witnesses were clearly concerned that the Government had not yet engaged sufficiently with bodies that deal with consumer affairs. However, by September, when the Competition and Markets Authority gave evidence, there was a marked change in tone and the CMA suggested that the Government had improved its contact with

relevant stakeholders. This increased level of engagement was confirmed by the Minister in October. (Paragraph 48)

8. We welcome the Minister's and the Department's promise to engage with stakeholders and consumer groups throughout the Brexit process on a regular and systematic basis, and hope that they are able to fulfil this wish. (Paragraph 49)
9. All our witnesses praised the Government's commitment to robust consumer protection rights post-Brexit and welcomed the European Union (Withdrawal) Bill as the means for achieving that end. The weight of our evidence suggests that the consumer protection *acquis* can be incorporated here via the Bill. (Paragraph 59)
10. We also welcome the Minister's promise that the UK system will guarantee the rights of those UK consumers who have made cross-border purchases. However, a significant question remains about the protection and enforceability of the consumer protection rights of those UK citizens who visit the EU27 post-Brexit. We ask the Minister to address this specific point in the Government's response to this report. (Paragraph 60)
11. The Minister offered us repeated, clear and unambiguous statements that the UK's departure from the EU will not lead to any reduction in the standards of consumer protection currently enjoyed by consumers in the UK. But, she did not address the question as to how the Government will maintain access to the cooperation mechanisms that facilitate the protection of European consumers which are intrinsic to the maintenance and development of standards across the EU. We ask the Minister to address this question when the Government responds to this report. (Paragraph 64)
12. The Minister was sympathetic to the concerns of our witnesses about the loss of the EU based reciprocal arrangements that police EU consumer protection law, of which the Consumer Protection Cooperation Regulation is particularly important. Nevertheless, she was unable to provide us with any detail as to how the Government might secure their application to the UK post-Brexit and we question whether the Government has given any thought to finding a solution to this problem. (Paragraph 73)
13. Reflecting the evidence we received throughout this inquiry, both the Minister and the Deputy Director in the Department acknowledged the importance of the Consumer Protection Cooperation Regulation and classed its post-Brexit operation in the UK as a high priority for the negotiations. We agree. (Paragraph 74)
14. We call on the Government to make every effort to engage the provision in the reformed Regulation (which will shortly be agreed by the Council) that encourages cooperation with non-EU Member States. (Paragraph 75)
15. Our evidence also pointed to the important role played in consumer protection by a number of the EU's Regulatory Agencies. We are concerned that when pressed, beyond advocating a "special and deep relationship" the Minister was unable to offer us any plan as to how the UK might secure access and/or membership of these agencies post-Brexit. (Paragraph 76)
16. We ask the Government to provide us with a clear approach as to how it will secure the UK's post-Brexit access to the EU's reciprocal cross-border



mechanisms, resources and infrastructure that police European consumer protection standards. (Paragraph 77)

17. We are concerned by the clear evidence from the national regulatory and trading standards bodies that they are already struggling to fulfil their important roles because of financial restraints even before the additional complications and challenges of Brexit. We were particularly struck by the implications of the Financial Conduct Authority's testimony that coping with Brexit will "involve some very hard choices". (Paragraph 84)
18. Despite placing the responsibility on local authorities, the Minister seemed sympathetic to our witnesses' views, but we are concerned that she was not able to offer us any solutions to this important problem. We encourage the Government to come forward with a plan to address this problem urgently. (Paragraph 85)
19. We urge the Government, when it responds to this report, to set out a clear plan aimed at alleviating the pressures on national regulators, and addressing how they will continue to interact in the interests of consumers, post-Brexit, with other national regulators in the EU's remaining 27 Member States. (Paragraph 86)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Lord Anderson of Swansea  
 Lord Cashman  
 Lord Cromwell  
 Lord Gold  
 Lord Judd  
 Baroness Kennedy of The Shaws (Chairman)  
 Earl of Kinnoull  
 Lord Lester of Herne Hill  
 Baroness Ludford  
 Baroness Neuberger  
 Lord Polak  
 Baroness Shackleton of Belgravia

### Declarations of interest

Lord Anderson of Swansea  
*No relevant interests declared*

Lord Cashman  
*No relevant interests declared*

Lord Cromwell  
*No relevant interests declared*

Lord Gold  
*No relevant interests declared*

Lord Judd  
*Member of the Advisory Board of the LSE Centre for the Study of Human Rights*  
*Life member of Court at Lancaster and Newcastle Universities*  
*Emeritus Governor of LSE*

Baroness Kennedy of The Shaws (Chairman)  
*Chair of Justice*  
*Co Chair of the International Bar Association's Human Rights Institute (IBAHRI)*

Earl of Kinnoull  
*No relevant interests declared*

Lord Lester of Herne Hill  
*Self-employed practising member of the English Bar, specialising in constitutional and administrative law, employment, media, commercial and European law*

Baroness Ludford  
*No relevant interests declared*

Baroness Neuberger  
*Husband is a new member (from October 2017) of the Competition Appeal Tribunal*

Lord Polak  
*Chairman of TWC Associates*

Baroness Shackleton of Belgravia  
*No relevant interests declared*

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Baroness Armstrong of Hill Top  
 Baroness Brown of Cambridge  
 Baroness Browning  
 Lord Cromwell  
 Lord Jay of Ewelme (Acting Chairman)  
 Baroness Kennedy of The Shaws  
 The Earl of Kinnoull  
 Lord Liddle  
 Baroness Neville-Rolfe  
 Baroness Suttie  
 Lord Selkirk of Douglas  
 Lord Teverson  
 Baroness Verma  
 Lord Whitty  
 Baroness Wilcox  
 Lord Woolmer of Leeds

During consideration of the report the following Members declared an interest:

Baroness Armstrong of Hill Top  
*Part-owner of a property in Spain*  
 Baroness Browning  
*Subscribing member of Which?*  
 Baroness Neville-Rolfe  
*Minister BEIS/BIS 2014–16; DCMS—2015–16*  
*Chairman, Assured Food Standards (Red Tractor)*  
 Lord Selkirk of Douglas  
*Director, Lennoxlove House Limited (remunerated as a Director)*  
*Chairman of Directors, and Director, Douglas-Hamilton (D Share) Ltd*  
*(small family company: agriculture and property; the Member's financial*  
*interest derives from his directorship, which is now paid as an annual sum*  
*above the registration threshold)*  
*President, Scottish Veterans' Garden City Association (national charity)*  
*Chairman, Scottish Advisory Committee, Skill Force (national charity)*  
*Diversified investment portfolio in McInroy & Wood Income Fund managed*  
*by third party*  
 Baroness Wilcox  
*Vice President National Consumer Federation*

A full list of Members' interests can be found in the Register of Lords Interests:  
<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <http://www.parliament.uk/brexit-consumer-protection-rights> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with a \*\* gave both oral and written evidence. Those marked with \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

*	Mr Pete Moorey, Head of Campaigns, Which?	<a href="#">QQ 1–9</a>
*	Mr Matt Upton, Head of Consumer Policy, Citizens Advice	<a href="#">QQ 1–9</a>
*	Mr Lewis Shand Smith, Chief Executive and Chief Ombudsman, Ombudsman Services	<a href="#">QQ 10–19</a>
*	Mr Leon Livermore, Chief Executive of the Chartered Trading Standards Institute	<a href="#">QQ 20–28</a>
*	Dr Scott Steedman CBE, Director of Standards, the British Standards Institution	<a href="#">QQ 20–28</a>
*	Mr Jason Freeman, Director, Consumer Law, Competition and Markets Authority	<a href="#">QQ 29–39</a>
*	Mr Roland Green, Deputy General Counsel, Competition and Markets Authority	<a href="#">QQ 29–39</a>
*	Mr Chris Woolard, Executive Director of Strategy and Competition, the Financial Conduct Authority	<a href="#">QQ 40–49</a>
*	Ms Kirstin Green, Deputy Director, Consumer Policy, Department for Business, Energy and Industrial Strategy	<a href="#">QQ 50–55</a>
**	Ms Margot James MP, Minister for Small Business, Consumers and Corporate Responsibility, Department for Business, Energy and Industrial Strategy	<a href="#">QQ 50–55</a>
*	Mr Adam Stevens, Head of EU Consumer Policy, Department for Business, Energy and Industrial Strategy	<a href="#">QQ 50–55</a>

### Alphabetical list of all witnesses

	Mr Alan Conroy, Maidstone Chambers	<a href="#">CPR0001</a>
	Competition and Markets Authority (CMA)	<a href="#">CPR0002</a>
*	Mr Jason Freeman, Director, Consumer Law, Competition and Markets Authority (QQ 29–39)	
*	Ms Kirstin Green, Deputy Director, Consumer Policy, Department for Business, Energy and Industrial Strategy (QQ 50–55)	

- ★ Mr Roland Green, Deputy General Counsel,  
Competition and Markets Authority (QQ 29–39)
- ★★ Ms Margot James MP, Minister for Small Business,  
Consumers and Corporate Responsibility, Department  
for Business, Energy and Industrial Strategy (QQ 50–55) [CPR0005](#)
- ★ Mr Leon Livermore, Chief Executive of the Chartered  
Trading Standards Institute (QQ 20–28)
- ★ Mr Pete Moorey, Head of Campaigns, Which?  
(QQ 1–9)
- Radiocentre [CPR0004](#)
- ★ Mr Lewis Shand Smith, Chief Executive and Chief  
Ombudsman, Ombudsman Services (QQ 10–19)
- ★ Dr Scott Steedman CBE, Director of Standards, the  
British Standards Institution (QQ 20–28)
- ★ Mr Adam Stevens, Head of EU Consumer Policy,  
Department for Business, Energy and Industrial  
Strategy (QQ 50–55)
- ★ Mr Matt Upton, Head of Consumer Policy, Citizens  
Advice (QQ 1–9)
- Professor Christopher Willett, Professor of Commercial  
Law, University of Essex [CPR0003](#)
- ★ Mr Chris Woolard, Executive Director of Strategy  
and Competition, the Financial Conduct Authority  
(QQ 40–49)